

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3177 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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HUSSAINMIYA MIRUMIYA SHAIKH

Versus

UNION OF INDIA

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Appearance:

MR NK MAJMUDAR for Petitioner

MR.HL JANI,AGP, for Respondents Nos.2,3, and 4.

MR.BT RAO, ADDL STANDING COUNSEL for Respondent No.1.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 17-2-1998 passed by the District Magistrate, Vadodara, under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act,1980 ( hereinafter prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PBM Act"), has filed this petition under Article 226 of the Constitution

of India challenging the legality and validity of his detention.

Since this petition is required to be allowed on the short ground of delay in considering the representation, it is not necessary for me to narrate the grounds of detention supplied to or the allegations made against the petitioner. Suffice it to say that the order of detention is passed on the ground of alleged irregularity in distribution of wheat to the citizens who are living below poverty line and to the citizens who are living above poverty line in pursuance of the Scheme introduced by the State Government which is known as A.P.L. (Above Poverty Line) and B.P.L. (Below Poverty Line).

Mr.Majmudar, learned Advocate for the petitioner, has contended that even though the petitioner submitted his representation to the Union of India as well as to the State Government, the District Magistrate and the Advisory Board, except the State Government, no other authority has considered the representation nor the petitioner was communicated any decision on such representation, if it was considered at all, and, therefore, the continued detention of the petitioner is vitiated. According to Mr. Majmudar there is an unexplained delay in considering the representation by the State Government and, therefore, also the continued detention of the petitioner is required to be quashed and set aside. The petitioner submitted his representation dated 2-3-98 to the Secretary, Government of Gujarat, Food and Civil Supplies and Consumers Affairs Department and as can be seen from the communication dated 18-3-98, the Section Officer of the Food and Civil Supplies Department communicated the decision of the State Government that the representation has been rejected on 18-3-98, which is produced alongwith the petition.

On behalf of the State Government, Mr.H.L.Jani, learned Assistant Government Pleader, has submitted that on behalf of respondent No.2 an affidavit in reply has been sworn in, however, the original could not be traced by him. I have, therefore, asked the learned Assistant Government Pleader to produce the second copy of the affidavit in reply. In paragraph 3 of the said affidavit, P.R.Shukla, Deputy Secretary, Government of Gujarat, Food and Civil Supplies and Consumers Affairs Department has tried to explain the delay in considering the representation by stating as under:

"3. With reference to para 1,2,3 and 4 of the

petition, I say and submit that the representation which was received by the State Government was considered by the State Government without any delay. I say and submit that representation dated 2-3-98 was made by the detenu addressed to the Secretary, Food , Civil Supplies and Consumer Affairs Department and was given to the Superintendent, District Jail, Bhavnagar was by the Jail Authority, vide letter dt. 2-3-98 was received by the Special Branch of Food, Civil Supplies and Consumer Affairs Department on 4-3-98. The said representations file was put up by the Special Branch on 5-3-98. Section Officer cleared the said file on 5-3-98. Under Secretary also cleared the said file on 5-3-98 and submitted before the Dy. Secretary, who cleared the said file on 5-3-98 and put up before the then Additional Chief Secretary. The then Additional Chief Secretary was in training at Masuri from 16-3-98 to 22-3-98. In between, from 5/3/ to 16/3 i.e. 8/3/, 13/3 , 14/3 , 15/3 were Govt holidays. During this period the charge of the Additional Chief Secretary was with the Principal Secretary of Panchayat and Gram Gruh Nirman Department. Therefore, the said file was sent to the Principal Secretary on 16-3-98, and it was cleared by him on 18-3-98 and submitted to the Hon Minister Civil Supplies on 18-3-98 and it was cleared by the Hon'ble Minister of Civil Supplies on 18-3-98. Thereafter ther said file was sent back to the Department which was received by the Additional Chief Secretary of Food, Civil Supplies and Consumer Affairs Department on 18-3-98. As the decision on the file was taken the detenu was informed accordingly vide Government letter dtd 18-3-98, therefore, it is quite clear that there is no delay in consideration of the representation by the State Government. It is further stated that the Central Government has sent the said representation by a letter dtd 9-3-98 calling for parawise remarks on the said representation dtd .2-3-98, which was received by the department on 16-3-98. But before that vide Government letter dtd 10-3-98 the parawise remarks on the said representation was already sent to the Central Government. Therefore, there is no question of delay in sending parawise remakrs to the Central Government."

On perusal of the said affidavit in reply, it is

clear that the deponent has omitted to give any explanation for not considering the representation for ten days between 6-3-98 and 15-3-98. Even if a judicial notice is taken of the fact that 13th, 14th and 15th were Government holidays, in that case also there is no explanation forthcoming with respect to the days from 9-3-98 to 12-3-98. Apart from that, even no affidavit in reply has been filed on behalf of respondent No.1-Union of India explaining the delay in considering the representation of the petitioner. In that view of the matter, I am of the opinion that by non-consideration of the representation during the aforesaid days and the delay in consideration of the representation has vitiated the continued detention of the petitioner.

In the result, this petition is allowed. The order of detention dated 17-2-98 is quashed and set aside. The detenu Hussainmiya Mirumiya Shaikh is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute to the aforesaid extent with no order as to costs.

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